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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/703,340 | 10/31/2000 | Viktors Berstis | AUS9-2000-0733-US1 | 3090 |

7590 01/13/2004

Joseph R Burwell
Law Office of Joseph R Burwell
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Austin, TX 78755-8022

EXAMINER

LINDINGER, MICHAEL L

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

2841

DATE MAILED: 01/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/703,340

Applicant(s)

BERSTIS ET AL.

Examiner

Michael L. Lindinger

Art Unit

2841

MW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1. Claim 1 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claim 1 of copending Application No.'s 09/703,344, 09/703,334, and 09/703,335. Although the conflicting claims are not identical, they are not patentably distinct from each other because discloses a time cell, which experiences a transition of states after a programming (charging) operation, detections means for detecting a value within a charge storage element, which is located within the time cell. An explicit obviousness statement is not necessary when the Claims are worded almost identically to one another.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Allowabl Subject Matter

1. Claims 1-29 contain allowable subject matter. Applicant's arguments provided in the Appeal Brief (Paper No. 13) overcome the Examiner's previous rejections. However, the Double Patenting rejections are still enforced pending a submission of a Terminal Disclaimer.

Prior Art

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Ishibashi U.S. Patent No. 5,374,904 discloses a phase-locked loop circuit having adjustable reference clock signal frequency and filter capacitance compensation.
- Ma U.S. Patent No. 6,067,244 discloses a ferroelectric dynamic random access memory, wherein an FE transistor replaces a capacitor.
- Begin U.S. Patent No. 4,995,019 discloses a time period measuring apparatus wherein time measure is achieved by utilizing a time variable interpose, which comprises components that correspond to an RC circuit.
- Curtis U.S. Patent No. 5,195,061 discloses a practice timer for measuring elapsed time during an activity comprising a variable time constant RC circuit.
- Takeda U.S. Patent No. Re. 35,043 discloses a self-charging electronic timepiece comprising a time constant RC circuit.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael L. Lindinger whose telephone number is (703) 305-0618. The examiner can normally be reached on Monday-Thursday (7:30-6).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on (703) 308-3121. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-7318 for regular communications and (703) 746-7318 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

MLL
January 5, 2004



Michael L. Lindinger
Patent Examiner
Art Unit 2841



DAVID MARTIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800

The **Ext. of times** in these four cases should have all been charged to **Deposit Acct: 50-1888** and the **Appeal Brief's** should have all been charged to **Deposit Acct: 09-0447**. But everything has been charged to **Deposit Acct: 50-1888** except for case **09/703,340** where both the **Ext. of time** and **Appeal brief** have been charged to **Deposit Acct: 09-0447**. Any questions please contact me at 703-308-6226.

Thanks in Advance
Reginald Tyson